NINTH ANNUAL REPORT

OF THE

CONFLICT OF INTEREST COMMISSIONER

February 25, 2010

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Hon. Kathleen M. Casey, Speaker
Legislative Assembly
P.O. Box 2000
Charlottetown, PE
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Dear Madam Speaker:

It is my honour and duty to submit to you the Ninth Annual Report of the Office of the Conflict of Interest Commissioner for the period July 1, 2008 to December 31, 2009.

This report is submitted pursuant to section 3(1) of the *Conflict of Interest Act*, R.S.P.E.I. 1988, Cap. C. 17-1.

Yours very truly,

A. Neil Robinson
Commissioner

NINTH ANNUAL REPORT OF THE CONFLICT OF INTEREST COMMISSIONER

This is the ninth annual report of the Conflict of Interest Commissioner covering the period July 1, 2008 to December 31, 2009.

Purpose of the Act

The goal of the Act is to set out the acceptable standards of conduct for elected Members of the Legislative Assembly (hereinafter called "Members") in order to ensure that the private interests of Members do not come into conflict with the performance of their public duties. The *Conflict of Interest Act* (hereinafter called "the Act") provides guidelines which govern the Members' conduct and so assist them to carry out their public duties with impartiality and integrity.

Conflict of Interest Commissioner

The Conflict of Interest Commissioner is an independent officer of the Legislative Assembly responsible for the administration of the *Act*. The Office was created in 1999 as a part-time position with part-time clerical assistance provided by the Legislative Assembly Office. The Commissioner reports to the Legislature through the Speaker with respect to Annual Reports, Investigative Reports and all other matters within the Commissioner's jurisdiction under the *Act*.

The Commissioner is appointed on the recommendation of the Standing Committee on Legislative Management and ultimately by a resolution of the Legislative Assembly supported by at least two-thirds of the Members. During the Fall Session, the Commissioner was re-appointed for a third five year term. Though the appointment is for a term of five years, the Commissioner may be removed by a resolution of the Legislative Assembly supported by at least two-thirds of the Members present in the Legislature at that time. Given the nature of the Commissioner's responsibilities, the continuing confidence of the Legislative Assembly is essential.

The Commissioner has four separate but related duties under the *Act*:

First, the Commissioner acts as a confidential advisor to Members, counselling each of them as to their obligations under the legislation. Members may request written advice or recommendations on any matter respecting the Member's obligations under the *Act*. Where the Member discloses all known relevant facts to the Commissioner and the Commissioner provides advice which is followed by the Member, then the Member cannot later be sanctioned under the *Act*. Information disclosed to the Commissioner is confidential and cannot be disclosed except with the Member's written consent, as required by law or otherwise in accordance with the *Act*.

Second, all Members must complete and file with the Commissioner a Private Disclosure Statement to disclose all assets, income, liabilities and financial interests held

by the Member, the Member's spouse or the Member's dependants. The Commissioner is required to meet with each Member at least once annually, to review the Member's Private Disclosure Statement to ensure that the Member continues to make full disclosure as required by the *Act*.

Third, the Commissioner prepares a Public Disclosure Statement for each Member of the Legislative Assembly. These Statements are filed with the Clerk of the Legislative Assembly and are available for public inspection.

Fourth, the Commissioner undertakes inquiries into alleged contraventions of the *Act*. To warrant investigating, the allegation must be filed within two years of the conduct to which the allegation relates. When the investigation is complete, the Commissioner provides a report to the Legislature through the Speaker. If the Commissioner concludes that the Member is in breach of the *Act*, the Commissioner recommends either no sanction if the breach that occurred was trivial or committed by inadvertence or an honest error in judgement or, a sanction which may range from a reprimand, to suspension without indemnity and allowance, to expulsion from the House and a declaration that the seat is vacant.

When the Commissioner recommends a sanction, the Legislative Assembly may approve or reject the recommendation. If the Legislative Assembly rejects the recommendation, the Legislature cannot deal with the matter in any further manner.

Fundamentals of the *Conflict of Interest Act*

There are three fundamental mechanisms by which Members may avoid conflicts of interest and achieve the purpose of the *Act*.

The first is by full disclosure. Members must fully disclose their personal and private interests as well as those of the Member's spouse and dependants to the Commissioner. Such disclosure enables the Commissioner to assess any potential conflict on the part of Members in carrying out their legislative or Executive Council responsibilities. As stated above, the Commissioner prepares a Private Disclosure Statement for each Member that is filed with the Clerk and accessible by the public.

The second broad principle is that Members must reorganize their private interests or relationships that might impair their judgement in the discharge of their public duties. Such a reorganization may involve divestiture of certain assets or, in the case of Ministers, putting the assets in a "blind trust."

The third broad principle is that of recusal. This principle requires Members to remove themselves from discussions or decisions on matters in which they have a private interest.

In addition to the Act, the Office of the Information and Privacy Commissioner and the Office of the Auditor General come into play to ensure that Members conduct themselves in a transparent and accountable manner. Through daily Question Period and

the workings of various Committees of the Legislature, Members are also subject to the public's scrutiny in the discharge of their public duties.

Private Disclosure Statements:

Annually each Member is obligated to prepare and file with the Commissioner an extensive written disclosure statement outlining personal financial and business affairs required by subsection 25(2) of the Act, which provides as follows:

> *(2) The private disclosure shall*
>
> > *(a) identify the assets and liabilities of the member and each person who belongs to the member's family, and state the value of the assets and liabilities;*
> > *(b) state any income the member and each person who belongs to the member's family have received during the preceding 12 months or are entitled to receive during the next 12 months, and indicate the source of the income;*
> > *(c) state all benefits the member, each person who belongs to the member's family, and any private company, or partnership in which any of them has an interest, have received during the preceding 12 months or are entitled to receive during the next 12 months as a result of a contract with the Government of Prince Edward Island, and describe the subject matter and nature of the contract;*
> > *(d) if the private disclosure statement mentions a private company or partnership,*
> >
> > > *(I) include any information about the activities of the private company or partnership and sources of income that the member is able to obtain by making reasonable inquiries, and*
> > > *(Ii) state the names of any other companies or partnership that are affiliates;*
> >
> > *(e) list all corporations and other organizations in which the member or a person who belongs to the member's family is an officer or director or has a similar position; and*
> > *(f) include any other information that the Commissioner requires.*

Thereafter the Member may comply with subsection 25(7), which is in the following terms:

> *(7) A member may, in respect of a calendar year, file with the Commissioner a revised private disclosure statement indicating the relevant changes for that calendar year in respect of the matters stated in the last private disclosure statement or revised private disclosure statement filed by the member for the immediately preceding calendar year.*

The information filed with the Commissioner is confidential and intended only for the purposes set out in the Act.

As required by subsection 25(4) of the Act, each Member met with the Commissioner as part of the private disclosure process to insure that adequate disclosure has been made and the Member's obligations under the Act are being met.

Public Disclosure Statements:

Following the meeting required to discuss the MLAs' Private Disclosure Statement the Commissioner is obliged by subsection 26(1) of the Act to prepare a Public Disclosure Statement based on the information provided by the Member.

The Public Disclosure Statements for each MLA were filed with the Clerk of the Legislative Assembly and are available for public viewing.

Statements of Gifts and Material Change:

Semi-annually each year, the Commissioner reminds each Member of their requirement to report any material change in their circumstances and the receipt of any gift or personal benefit. Each Member is required to file a Statement of Gifts and Personal Benefits as well as a Statement of Material Change where warranted. These documents were forwarded to each Member on May 1, 2009 and revisions as required were made to the Public Disclosure Statements.

Investigations

The Act provides that a Member may request that the Commissioner give an opinion whether another Member has contravened the *Act* or a Parliamentary Convention of Prince Edward Island. Any Member who requests such an opinion must have reasonable and probable grounds supported by affidavit evidence.

The Act also provides that by Resolution, the Legislative Assembly may request that the Commissioner render an opinion as to whether a Member has contravened the *Act* or Parliamentary Convention. Further, either the Premier or the Executive Council may ask the Commissioner for an opinion about whether a Member of the Executive Council has violated the Act or Parliamentary Convention of Prince Edward Island. Any such request or complaint must comply with section 28(7) of the *Act* which is in the following terms:

> *"29(7) No matter may be referred to or considered by the Commissioner if more than two years have elapsed from the date of the alleged contravention of this Act or Prince Edward Island parliamentary convention."*

I am pleased to advise that no complaints were laid against any Member during the past year.

Reports

On September 23, 2009, the Speaker, on behalf of the Legislative Assembly, requested that the Commissioner review Articles 3.117 - 3.123 of the 2009 Annual Report of the Auditor General. The Speaker requested that the Commissioner provide his "...opinion on the findings of the Auditor General in the Articles noted." In response to this specific request a Report to the Speaker was prepared and can be viewed at www.assembly.pe.ca .

Conclusion

The *Act* provides that Members of the Legislative Assembly must serve the public when discharging their public responsibilities. Where there is a conflict between the public interest and the Member's private interest, it is the public interest that should prevail.

During the past year I have once again been impressed with the cooperation displayed by our elected representatives. Without exception, each Member has followed the advice or instructions provided by this Office.

In closing, I wish to again express my gratitude to the Clerk of the Legislative Assembly, Mr. Charles MacKay, and Ms. Cheryl Stead, Administrative Officer, in providing much needed administrative support and advice.

February 25, 2010

A. Neil Robinson
Commissioner